

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 280 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH  
and  
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO
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COMMISSIONER OF INCOME TAX

Versus

SURAT DIST CO OP SPINNING MILL

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Appearance:

1. INCOME TAX REFERENCE No. 280 of 1987  
MR BB NAIK with MR RP BHATT for Petitioner No. 1  
NOTICE SERVED for Respondent No. 1
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CORAM : MR.JUSTICE M.S.SHAH  
and  
MR.JUSTICE D.A.MEHTA

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The following two separate questions are referred to us for our opinion in respect of assessment years 1978-79 and 1981-82:

ASSESSMENT YEAR 1978-79:

- (i) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law, in holding that the assessee was eligible to a deduction under section 80P(2)(d) of the Act on interest of Rs.3396/- received by the assessee from the Cooperative Societies without taking into account that a sum of Rs.6,52,321/- was paid by the assessee as interest to other Cooperative Societies and thus, there is no positive surplus under this source ?"

ASSESSMENT YEAR 1981-82:

- (ii) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was eligible to relief under section 80 P(2)(d) of the Act on interest of Rs.55,503/- received by the assessee from the cooperative societies without taking into account that sum of Rs.4,48,000/- was paid by the assessee as interest to other cooperative societies and there is no positive surplus under this source ?"

2. It is pointed out to us that a Reference was made to this Court by Income Tax Appellate Tribunal on the same controversy in the case of C.I.T. vs. Surat District Cooperative Milk Producers' Union and by the decision in that case reported in 211 ITR 726, this Court left the question unanswered for the reasons given in the judgment. The Tribunal was directed to decide the question on merits after considering the relevant facts and law laid down by the Supreme Court in the cases of Cambay Electric Supply Industrial Co. Ltd. vs. CIT, reported in 113 ITR 84 (S.C.) and Distributors (Baroda) Pvt. Ltd. vs. Union of India, reported in 155 ITR 120. Following the said decision the question referred to us is left unanswered, leaving it open to the Tribunal to decide the question on merits after considering the relevant facts in the light of the law laid down by the Supreme Court and the earlier decision of this Court in the case of CIT vs. Surat Dist. Cooperative Milk Producers' Union Ltd. 211 ITR 726.

This Reference stands disposed of accordingly

with no order as to costs.

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zgs/-